

**IN THE UNITED STATE'S DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

<b>STEPHEN TAPP,</b>	§	
<b>Plaintiff,</b>	§	
	§	
<b>vs.</b>	§	<b>Civil Action No. 4:11-CV-02971</b>
	§	
<b>UNIVERSITY OF TEXAS HEALTH</b>	§	
<b>SCIENCES CENTER AT HOUSTON-</b>	§	
<b>SCHOOL OF DENTISTRY, DR. JOHN A.</b>	§	
<b>VALENZA, D.D.S., DEAN, AND SARGENT J.</b>	§	
<b>TAYLOR, BOTH INDIVIDUALLY</b>	§	
<b>Defendants.</b>	§	

**PLAINTIFF'S OPPOSED MOTION FOR CONTINUANCE**

**TO THE HONORABLE JUDGE OF SAID COURT:**

**NOW COMES** Stephen Tapp, Plaintiff herein, by and through his attorney of record, Martin J. Cirkiel of the Law Firm of Cirkiel & Associates, P.C, and brings this their "*Plaintiffs Opposed Motion For Continuance*," and would respectfully show this Court the following:

**I. FACTUAL AND PROCEDURAL RESUME**

1. Plaintiff filed this cause of action on or about August 11, 2011 (DE# 1). Shortly thereafter the Court set a scheduling conference for December 16, 2011 at 8:45a.m. Unfortunately Counsel did not correctly calendar this conference.
2. Plaintiff's Counsel has been asked to present a workshop for the "The National Center For Victims Of Crime," workshop on *Responding To Crime Victims With Disabilities National Training Conference* on December 14<sup>th</sup> and 15<sup>th</sup>. Unfortunately, he scheduled his return trip on Friday, December 16<sup>th</sup> and will not be back in Texas until later that day.
3. On October 11<sup>th</sup>, the University Of Texas Health Science Center ("UT HSC") Defendant,

filed their *Motion To Dismiss* (DE# 3). This pleading by the UT HSC Defendant significantly addresses, among other things, the jurisdictional issue related to limitations and 11<sup>th</sup> Amendment Immunity.

4. Shortly thereafter, and on or about November 1<sup>st</sup>, Plaintiff filed his *First Amended Complaint* (DE# 5) adding two (2) Defendants. As of this writing Plaintiff is in the process of having these Defendants correctly served, which should be completed shortly.
5. On November 4<sup>th</sup> the University Of Texas Health Science Center Defendant, filed their *Amended Motion To Dismiss* (DE# 6) reiterating the same jurisdictional arguments. In response to certain items pled in that *Motion* Plaintiff has recently (on November 28<sup>th</sup>) sought leave of Court (DE# 7) to file their Second Amended Complaint (DE# 8) which hopes to better articulate facts to address the jurisdictional arguments previously made by UT HSC, especially as to limitations.
6. In addition, and once correctly served, Plaintiff reasonably believes that each individual state Defendant will file their own *Motion To Dismiss*. These pleadings will surely rely upon qualified immunity, another jurisdictional argument.
7. Plaintiff's Counsel reasonably believes it satisfies important public policy concerns of judicial economy for all these jurisdictional arguments to be heard at one time, and when the briefing on all the issues noted above is complete.
8. In lieu of this Counsel's scheduling conflicts noted above (¶1-2) and the practical case development issues also addressed (¶3-7), Plaintiff's Counsel requests a continuance of the scheduling conference currently set for December 16, 2011 at 8:45a.m., at a time to consider all the legal issues at one time.

9. These requests are not for delay but rather so that justice may prevail.

**PRAYER**

**WHEREFORE, PREMISES CONSIDERED**, Plaintiff prays that this “Opposed Motion For Continuance,” be granted and for such other further relief as the Court may deem just and proper in law or in equity.

Respectfully submitted,

Cirkiel & Associates, P.C.

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/s/ Martin J. Cirkiel  
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ATTORNEY FOR PLAINTIFFS

**DECLARATION**

I swear under the penalties of perjury that the information provided in “*Plaintiffs Opposed Motion For Continuance*,” is true and correct, to the best of my knowledge.

/s/ Martin J. Cirkiel  
\_\_\_\_\_  
Martin J. Cirkiel

**CERTIFICATE OF CONFERENCE**

I confirm that on or about December 1, 2011 I communicated with Counsel for the UT HSC Defendant, the Honorable Mishell Kneeland, who was OPPOSED to this motion.

/s/ Martin J. Cirkiel  
\_\_\_\_\_  
Martin J. Cirkiel

**CERTIFICATE OF SERVICE**

This is to certify that on this the 1<sup>st</sup> day off December, 2011, I electronically filed the foregoing document with the Clerk of the Court for the U.S. District Court, Southern District of Texas, using the electronic filing system of the Court. The electronic case filing system will send a “Notice of Electronic Filing” to the following attorney of record who has consented in writing to accept this Notice as service of this document by electronic means:

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/s/ Martin J. Cirkiel  
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